

Supreme Court of Kentucky

2009-07

ORDER

**In Re: Amendments to the Rules of Administrative Procedure
 AP Part XIII Procedures for Drug Court**

It is HEREBY ORDERED that Part XIII of the Rules of Administrative Procedure are hereby deleted in their entirety and shall be replaced by the following:

Section 1. Definitions

As used in these sections, unless the context otherwise requires:

- (1) “Administrative discharge” means the discharge of a participant from drug court due to the participant’s inability to complete drug court through no fault of his/her own.
- (2) “Aftercare” means the time period following successful completion of Phase III of the drug court requirements, during which the participant shall demonstrate the ability to maintain a drug-free, alcohol-free and crime-free lifestyle and may continue to receive treatment and other supportive services. For felony drug courts, aftercare is 180 days and for misdemeanor drug courts, a minimum of 90 days.
- (3) “Agreement of Participation” means the written agreement required to be signed by all potential drug court participants prior to the determination of eligibility for drug court.
- (4) “AOC Drug Court Executive Officer” means the AOC employee appointed by the AOC Director to support drug court and administer and oversee its funding.
- (5) “AOC” means the Administrative Office of the Courts, the agency authorized by the Kentucky Supreme Court to support drug court and administer and oversee its funding.

- (6) "Approved local diversion procedures" means pretrial diversion procedures authorized by the Kentucky Supreme Court within each judicial circuit.
- (7) "COJ" means the Court of Justice.
- (8) "Drug court graduation" means the public ceremony acknowledging the successful completion of Phases I, II and III of drug court. Aftercare may be required in some drug courts prior to graduation.
- (9) "Drug court judge" means a judge who, in addition to his/her regular judicial duties, conducts drug court sessions and staffings, monitors and reviews the participant's progress in the drug court program, imposes sanctions and incentives, and facilitates other components of the drug court program.
- (10) "Drug court program" means any program authorized and administered by the Kentucky Supreme Court which provides an alternative to incarceration in cases which stem from substance abuse or dependence. A drug court shall combine supervision, drug testing, case management, judicial interaction and treatment for drug court participants.
- (11) "Drug court staff" means personnel hired and employed by the AOC Drug Court Department who perform the daily operations of drug court, including but not limited to, conducting eligibility assessments, providing case management for participants, attending drug court staffings and sessions, and coordinating drug testing.
- (12) "Drug court team" means the non-adversarial group that promotes public safety while acting in the best interest of the public and the participant, and determines the appropriate responses for a participant's compliance or non-compliance with drug court requirements. While the drug court team determines appropriate responses for participant compliance or non-compliance, the drug court judge has the ultimate decision making authority. For adult drug courts, the drug court team shall be comprised of the drug court judge,

and drug court staff, and should include law enforcement, prosecutor(s), defense counsel, and treatment provider(s). Optional members with each drug court may be representatives from the office of probation and parole, the circuit court clerk's office, the community, and other ancillary agencies.

- (13) "Eligibility Assessment" means a tool used by drug court staff to evaluate drug use history, legal/criminal history, mental/physical health history, family history, and educational/employment history, for purposes of determining whether a defendant will be considered for admission into drug court.
- (14) "Eligible offenses" means drug or drug-related offenses, excluding violent offenses and sexual offenses.
- (15) "Home visit" means the on-site appearance of drug court staff who are accompanied by a law enforcement or probation and parole officer at the participant's home for the purposes of verifying stable, drug-free housing and curfews, among other verifiers.
- (16) "Incentives" means tangible or intangible rewards earned by participants for positive steps taken toward attaining a drug-free, crime-free lifestyle, and may include, but are not limited to, promotion to the next phase, certificates and tokens, decreased supervision, increased privileges and responsibilities, praise from the drug court judge and team, extended curfews, and other individual incentives approved by the drug court team.
- (17) "Involuntary termination" means the termination of a participant from drug court by the drug court judge due to the participant's non-compliance with drug court's requirements, rules, or conditions.
- (18) "Justice system case processing" means the manner in which a case is processed within the Kentucky COJ, as reflected in KyCourts II or the current COJ case management system.
- (19) "Notice of Defendant Referral Status" means the document provided to the sentencing judge following the defendant's assessment wherein a

determination of eligibility or ineligibility for admission to drug court has been made.

- (20) "Non-AOC support personnel" means interns and volunteers, including but not limited to, other staff supplied by a city or county office or official not employed by the AOC Drug Court Department who work with the drug court.
- (21) "Phase" means a set of minimum and distinct criteria required of a drug court participant.
- (22) "Recovery program" means a long-term residential program for participants seeking recovery from alcohol or other drugs, which provides a setting for non-medical detoxification and utilizes peer-counseling and other counseling techniques.
- (23) "Referring judge" means the judge who refers a defendant to drug court.
- (24) "Sanctions" means the range of consequences imposed for the participant's failure to comply with the requirements or other conditions of drug court, which are appropriate, consistent and immediately applied. Sanctions may include, but are not limited to, admonishments from the judge, residential drug treatment, community service, phase demotion, increased group sessions, home incarceration, imprisonment in a detention facility, or termination from drug court.
- (25) "Sentencing judge" means the judge who sentences the defendant in the underlying criminal case; he/she may also be the referring judge.
- (26) "Session" means the scheduled appearance of the participant before the drug court judge, during which the progress of the participant is reviewed and incentives may be granted or sanctions imposed.
- (27) "Staffing" means meetings held by the drug court team prior to a drug court program session, for the purpose of discussing the participants' progress.

- (28) "Suspension" means a temporary stay of participation in the drug court program imposed by the drug court judge, during which time no credit is earned toward the completion of the three drug court phases.
- (29) "Temporary inactive" means the status of a participant in drug court who is unable to meet drug court requirements on a short-term basis, excluding reasons of inpatient treatment or incarceration. The participant is temporarily released from drug court supervision pursuant to a judge's order and shall resume participation and supervision when the circumstance is resolved.
- (30) "Transfer for all further proceedings" means a transfer of the underlying criminal case to the drug court judge for both drug court proceedings and all further criminal proceedings.
- (31) "Treatment provider" means an individual or agency licensed or certified to provide treatment and counseling to drug court participants as specified by the AOC Drug Court Department.
- (32) "Violent Offender" as defined by federal regulation 28 C.F.R 93.3 means an offender who either is currently charged with or convicted of an offense during the course of which: 1) The person carried, possessed, or used a firearm or other dangerous weapon; or there occurred the use of force against the person of another; or there occurred the death of or serious bodily injury to any person; with or without regard to whether proof of any of the elements described herein is required to convict; or 2) has previously been convicted of a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.
- (33) "Voluntary termination" means the termination by the drug court judge of a participant from drug court at the participant's request, but only after a determination has been made that the request was knowingly and voluntarily made.

Section 2. Key Components of a Drug Court

All drug court programs shall include the following key components as defined and required by the U. S. Department of Justice, Office of Justice Programs:

- (1) Drug courts integrate alcohol and other drug treatment services with justice system case processing;
- (2) Prosecution and defense counsel, in a non-adversarial manner, promote public safety while protecting participants' due process rights;
- (3) Eligible participants are identified early and promptly placed in the drug court program;
- (4) Drug courts provide a continuum of alcohol, drug, and other treatment and rehabilitative services;
- (5) Abstinence is monitored by frequent alcohol and other drug testing;
- (6) A coordinated strategy governs drug court responses to participants' compliance;
- (7) Ongoing judicial interaction with each drug court participant is essential;
- (8) Monitoring and evaluation of the drug court program measure the achievement of program goals and gauge effectiveness;
- (9) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations; and,
- (10) Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Section 3. Mission Statement

Kentucky Drug Court's mission is to restore lives and reduce recidivism through judicial oversight and behavior modification.

Section 4. Administrative Office of the Courts to Oversee Drug Court

The AOC shall support drug courts statewide, and administer and oversee its funding. The AOC shall also be authorized to establish further policies and procedures relating to drug court.

Section 5. Drug Court Referral Process

In those jurisdictions having a drug court, a defendant shall be referred to drug court through one of the following procedures:

- (1) A referral to drug court may be made at any time during probation, including a referral in lieu of revocation. A defendant who is referred to drug court by an order of probation shall have entered a guilty plea or been found guilty of an eligible offense(s). The sentencing judge, upon request of the attorney for the defendant or another interested party, or, alternatively, sua sponte, may order a defendant to be referred to drug court for a determination of the defendant's eligibility.
- (2) A referral to drug court may be made utilizing approved local diversion procedures.
- (3) Any judge may refer a person charged with contempt of court to drug court in lieu of being incarcerated on the contempt charge, but only after an order of contempt has been entered.

Section 6. Eligibility and Assessment

- (1) Upon receipt of a written order of referral from a judge, drug court staff shall determine whether a defendant meets the following criteria:
 - (a) The defendant was referred pursuant to Section 5 of these rules;
 - (b) The defendant never successfully completed or was terminated from a Kentucky adult drug court;
 - (c) The defendant is not a "sex offender" as defined by KRS 17.550;
 - (d) The defendant is not a "violent offender" as defined by federal regulation, 28 C.F.R. 93.3
- (2) If a defendant does not meet the criteria set forth in subsection (1) above, drug court staff shall inform the referring judge in writing using AOC form #DC-7.
- (3) If a defendant does meet the criteria set forth in subsection (1) above, drug court staff shall thoroughly explain the drug court process and the Agreement of Participation to the defendant. The defendant shall be required to sign the Agreement of Participation with or without the presence of his/her

attorney. If a defendant refuses to sign the Agreement of Participation, drug court staff shall notify the referring judge by utilizing AOC form # DC-7. Refusal by the defendant to sign the Agreement of Participation shall render him/her ineligible for participation in drug court.

(4) Upon execution of the Agreement of Participation, drug court staff shall complete an eligibility assessment. After completing the eligibility assessment, drug court staff shall complete AOC form # DC-7. The eligibility assessment, AOC form # DC-7 and any other pertinent information regarding the defendant shall be completed and submitted to the drug court team prior to the defendant's next scheduled court appearance.

Section 7. Acceptance of Defendant into Drug Court

Upon receipt of the eligibility assessment, AOC form # DC-7 and other pertinent information regarding the defendant, the drug court team shall provide input into the decision for acceptance; however, the drug court judge shall have the final decision-making authority concerning acceptance of an eligible person into drug court. To determine acceptance, the drug court judge and team shall evaluate the following:

- (1) Current criminal charge(s)/conviction(s);
- (2) Past criminal conviction(s), if any;
- (3) Results of the eligibility assessment;
- (4) Information regarding the victim(s), if any;
- (5) Defendant's willingness to participate; and,
- (6) Other relevant information as identified by the drug court judge and team.

Section 8. Admission of Defendant into Drug Court

Upon an offer of admission to drug court and upon the defendant's acceptance of the offer to enter drug court, the referring judge shall complete AOC form # DC-8 (Order of Admission to Drug Court). The order shall indicate that the defendant's case shall be transferred to the drug court judge for all further proceedings.

Cases may only be transferred to a different circuit or district pursuant to Section 9 of these rules.

Section 9. Transfer of Cases between Drug Courts

A defendant may request to participate in a drug court program outside of the jurisdiction of his/her underlying offense either at the time of referral to the drug court program or after entry into a drug court program. The drug court team in the county the defendant requests to transfer must agree to accept the defendant prior to the transfer being finalized. If accepted, the judge shall complete an AOC Form DC-55 (Order Transferring), transferring the entire criminal case.

Section 10. Drug Court Participant Requirements

(1) A Drug Court shall consist of three phases as follows:

- a. Phase I - stabilization phase;
- b. Phase II - education phase; and,
- c. Phase III - self-motivation phase.

Aftercare shall be required upon a drug court participant's completion of all three phases. The three phases shall take a minimum of twelve months to complete. Drug court, including the aftercare component, can be completed in a minimum of eighteen months for felony defendants and fifteen months for misdemeanor defendants.

(2) Drug court participants shall adhere to the following minimum requirements during each phase as follows:

(a) For Phase I, the participant shall:

- i. Provide at least three (3) random urine drug/alcohol screens per week;
- ii. Attend at least three (3) contact hours per week;
- iii. Attend one court session per week;
- iv. Obtain and/or maintain court-approved full-time employment, training or education;
- v. Obtain and/or maintain court-approved housing;

- vi. Make arrangements for payments of court obligations;
 - vii. Make at least one (1) weekly individual contact with drug court staff;
 - viii. Indicate an initial understanding of substance abuse treatment;
 - ix. Attend a self-help program, such as a 12-step program; and,
 - x. Remain drug-free for at least 30 consecutive days before consideration for promotion to the next phase.
- (b) For Phase II, the participant shall:
- i. Provide at least two random urine drug/alcohol screens per week;
 - ii. Attend two (2) contact hours per week;
 - iii. Attend one (1) court session every two weeks;
 - iv. Maintain court-approved full-time employment, training or education;
 - v. Maintain court-approved housing;
 - vi. Continue paying court obligations;
 - vii. Make at least one individual contact with drug court staff per week;
 - viii. Indicate an appropriate understanding of recovery principles;
 - ix. Continue to attend self-help programs, such as a 12-step program; and,
 - x. Remain drug-free for the final 90 consecutive days of this Phase before consideration for promotion to the next Phase.
- (c) For Phase III, the participant shall:
- i. Provide at least one random urine/drug screen per week;
 - ii. Attend one (1) contact hour per week;
 - iii. Attend one (1) court session every three weeks;
 - iv. Maintain court-approved full-time employment, training or education;
 - v. Maintain court-approved housing;

- vi. Continue paying court obligations;
- vii. Make at least one (1) individual contact with drug court staff per week;
- viii. Indicate an appropriate understanding of a recovery lifestyle;
- ix. Continue to attend self-help programs, such as a 12-step program; and,
- x. Remain drug-free for 90 consecutive days, for a total of 180 consecutive days for both Phases II and III before being considered for Aftercare.

(3) Each drug court shall establish an aftercare component, taking into account the availability of resources and the requirements of the drug court team. Each proposed aftercare component shall be submitted to the AOC Drug Court Executive Officer for approval no later than 180 days following implementation of drug court in a circuit or district. Within 30 days following the adoption of these Rules of Administrative Procedures, the aftercare components currently in effect in a circuit or district shall be submitted to the AOC Drug Court Executive Officer for review and approval.

(4) Drug court participants may be ordered to comply with additional requirements, which include, but are not limited to, the following:

- (a) Employment, school, and/or home visits by drug court staff (drug court staff shall be accompanied by a law enforcement officer or a probation and parole officer for any home visit);
- (b) Domestic violence counseling with a certified domestic violence treatment provider, or other types of counseling, as referred by drug court;
- (c) Curfews as established by drug court; and,
- (d) Medical and/or mental health referrals and subsequent treatment recommendations.

(5) In the event a situation arises in which it becomes impracticable for a participant to be supervised by drug court staff, the drug court judge shall issue an order placing the defendant on temporary inactive status and releasing drug court staff from supervision responsibilities, on AOC form # DC-66 (Order

Designating Temporary Inactive Status). Examples of impracticability may include, but are not limited to: contagious or infectious disease, short-term medical care for a family member, or any other reason that would cause a temporary inability to meet drug court requirements. Once the defendant has the ability to resume participation in the drug court program, the drug court judge shall enter an order resuming active status and returning the participant to drug court supervision, on AOC form # DC-67 (Order Resuming Active Status).

Section 11. Incentives

Incentives may be provided during drug court sessions and may include, but are not limited to, promotion to the next phase, certificates and tokens, decreased supervision, increased privileges and responsibilities, praise from the drug court judge and team, extended curfews, and other individual incentives approved by the drug court team.

Section 12. Sanctions for Non-compliance with Drug Court Requirements

Each participant shall comply with the requirements and other conditions established by drug court. Failure to comply may result in the imposition of sanctions upon the participant by the drug court judge. Sanctions may include, but are not limited to, admonishments from the drug court judge, community service, phase demotion, increased program requirements, home incarceration, imprisonment in a detention facility, and termination from drug court. Graduated sanctions may be utilized for continuous noncompliance. When considering appropriate sanctions, drug court teams shall consider alternatives to incarceration.

Section 13. Suspension

In the event that standard drug court participation, as defined in Section 10, is impracticable due to inpatient treatment, incarceration, or similar circumstances in which the participant is being monitored by an authorized third party, the participant shall be placed in suspended status. Upon release from the

authorized third party, the participant shall resume standard drug court participation. During the time in which the participant is suspended, no credit shall be earned toward the completion of the three drug court phases.

Section 14. Administrative Discharge

(1) If a drug court participant cannot complete drug court through no fault of his/her own, he/she may be administratively discharged. If the drug court team determines that administrative discharge is appropriate, the drug court staff shall complete a Request for Voluntary Termination to provide to the drug court judge, and the drug court judge shall grant or deny the request. If granted, the Notice of Administrative Discharge shall be filed in the official court record and the case referred back to the appropriate circuit or district court.

(2) An administrative discharge does not preclude eligibility for drug court at a later date.

Section 15. Voluntary Termination

(1) Participants may request voluntary termination from drug court utilizing a Request for Voluntary Termination. If the drug court judge determines that the request is knowingly and voluntarily made, the drug court judge shall grant the request.

(2) Upon voluntary termination, the participant shall be ineligible for further participation in any Kentucky adult criminal drug court.

Section 16. Involuntary Termination from Drug Court

(1) The drug court staff or team may make a recommendation to the drug court judge that a participant be terminated from drug court due to the participant's non-compliance with drug court requirements or conditions. If the drug court judge agrees with the recommendation of termination, drug court staff shall complete a Notification of Violations and Termination requesting the judge to terminate the participant from drug court. The participant shall be notified of the termination in the drug court session, unless the participant has absconded.

Upon signature of the Notification of Violations and Termination by the drug court judge, the case shall be referred back to the appropriate circuit or district court for further proceedings. The Notification of Violations and Termination shall be filed in the official record by the circuit court clerk.

(2) In the case of a participant who has absconded for a period of at least ten working days, drug court staff shall complete a Notification of Violations and Termination. Upon signature of the Notification of Violations and Termination by the drug court judge, the case shall be referred back to the appropriate circuit or district court for further proceedings. The Notification of Violations and Termination shall be filed in the official record.

(3) Upon involuntary termination, a participant shall be ineligible for further participation in any Kentucky adult criminal drug court.

Section 17. Successful Completion of Drug Court

(1) A participant shall be determined to have successfully completed drug court after:

- (a) Completing all three drug court phases;
- (b) Completing aftercare;
- (c) Paying all restitution owed; if the participant is unable to pay restitution in full while in drug court, the drug court team may require a reasonable amount be paid to comply with this provision; and
- (d) Paying all costs, fines or fees.

(2) Successful completion requires that no criminal charges be pending against the participant.

(3) Upon successful completion of drug court, the drug court judge may:

- (a) Dismiss the underlying charge(s), if the participant was on diversion, but only when restitution, if any, has been paid in full; or
- (b) Modify probation to be conditionally discharged if the participant was on probation or found in contempt of court, but only when restitution, if any, has been paid in full.

(4) A drug court graduation should be held for an eligible participant within 90 days of successful completion of Phase III of drug court as outlined above, but in no event shall a drug court graduation be held later than 210 days after successful completion of Phase III.

Section 18. Drug Court Staffing

(1) The drug court judge and drug court staff shall attend staffing prior to drug court sessions. The prosecutor, defense attorney, and other drug court team members are encouraged to attend these staffings. Drug court staffings shall be confidential and non-team members shall not attend absent extraordinary circumstances. If there is an extraordinary need for a non-team member to attend, upon approval by the drug court judge, the non-team member shall be allowed to attend the staffing, but only after signing a confidentiality agreement.

(2) At drug court staffings, the drug court team shall discuss the following:

- (a) Whether to admit potential participants into drug court;
- (b) Appropriate sanctions for violations by current participants;
- (c) Achievements and phase advancement of participants who will appear at the drug court session; and
- (d) Other pertinent issues relating to drug court participants.

Section 19. Drug Court Sessions

A drug court judge shall conduct a drug court session as follows:

(1) In a single-county circuit or district, one drug court session shall be conducted per week.

(2) In a multi-county circuit or district, one drug court session should be held per week; however, if weekly sessions are not possible, a drug court judge shall conduct at least two drug court sessions per month. If drug court sessions are not held every week, drug court staff shall meet with participants at the same time that drug court regularly meets.

Section 20. Confidentiality

- (1) Drug court proceedings shall be confidential and all proceedings shall be closed unless otherwise authorized by the drug court judge.
- (2) Documents contained in a participant's drug court case file shall be confidential and shall not be released other than those documents specified in Section 21 of these rules.
- (3) In accordance with federal regulations regarding substance abuse treatment programs, drug court team members shall sign a confidentiality agreement.
- (4) Drug court team members shall comply with state and federal confidentiality laws regarding treatment information.

Section 21. Filing of Drug Court Documents

Upon utilization of any of the following documents, the document(s) shall be filed by the drug court staff with the appropriate court clerk for inclusion in the court record of the underlying criminal offense:

- (1) Order Referring to Drug Court;
- (2) Drug Court Notice of Defendant Referral Status;
- (3) Order of Admission;
- (4) Order Transferring;
- (5) Order Designating Temporary Inactive Status;
- (6) Order Resuming Active Status;
- (7) Notice of Voluntary Termination;
- (8) Notice of Violations and Termination; and
- (9) Acknowledgement of Successful Completion, or Notice of Administrative Discharge.

Section 22. Collection of Fees

- (1) A reimbursement fee may be imposed by drug court for treatment services, the cost of a laboratory confirmation of a positive drug test, or other required services.

(2) Reimbursement fees shall be in the form of certified checks, cashier's checks or money orders, each of which shall be made payable to the Kentucky State Treasurer. At no time shall drug court staff accept cash from a participant.

(3) No judge or drug court staff shall collect monies for use for drug court through forfeiture, plea agreements, sanctions, fees, fines or other costs, other than those referred to herein.

Section 23. Drug Testing

(1) Drug testing shall be administered to all drug court participants on a frequent and random basis. Phase I participants shall be tested at least three times per week; Phase II participants shall be tested at least two times per week; and Phase III participants shall be tested at least one time per week.

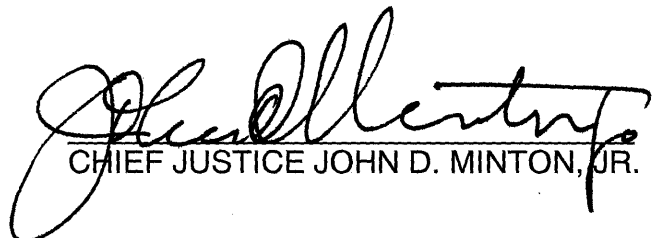
(2) Drug tests performed by individuals other than the drug court staff, the drug court team, or the AOC authorized drug testing vendor, shall not be admissible in drug court.

(3) All drug court participants shall be required to make daily telephone contact, utilizing a toll-free telephone number, wherein a recording announces phase(s) and times for specimen collections for each individual drug court.

(4) Instant, laboratory, and other drug tests supplied by drug court shall be utilized for drug court participants only. Inventory of supplies shall be audited on a random basis.

(5) Medically supervised detoxification or treatment that will affect drug testing on a temporary basis may be authorized by the drug court judge. However, medically supervised detoxification or treatment that will affect drug testing beyond a 6-month period shall not be authorized and shall preclude a participant from initiating or continuing participation in drug court.

ENTERED: July 30, 2009.


CHIEF JUSTICE JOHN D. MINTON, JR.